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Forever 21 Retail, Inc., Forever 21
Logistics, LLC, and Forever XXI, Inc.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

bebe stores, inc., a California corporation; and
bebe studio, inc., a California corporation,

Plaintiffs,

v.

Forever 21, Inc., a Delaware corporation;
Forever 21 Retail, Inc., a California
corporation; Forever 21 Logistics, LLC, a
Delaware limited liability company; and
Forever XXI, Inc., a California corporation,

Defendants.

CASE NO. C 07 0035 MJJ

**ANSWER OF DEFENDANTS FOREVER 21,
INC., FOREVER 21 RETAIL, INC.,
FOREVER 21 LOGISTICS, LLC, AND
FOREVER XXI, INC. TO COMPLAINT
FOR COPYRIGHT INFRINGEMENT**

Date: none
Time: none
Dept: 11
Judge: Hon. Martin J. Jenkins
No trial date

Defendants Forever 21, Inc., Forever 21 Retail, Inc., Forever 21 Logistics, LLC and
Forever XXI, Inc. (collectively "Forever 21") for themselves alone, hereby answer the Complaint
for Copyright Infringement, Unfair Competition and Tortious Interference with Prospective
Economic Advantage filed by plaintiffs bebe stores, inc. and bebe studio, inc. on or about January 4,
2007 as follows:

PARTIES

1. Forever 21 is without knowledge or information sufficient to form a belief as
to the truth or falsity of the allegations of Paragraph 1 and therefore denies those allegations on that
basis.

2. Forever 21 is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations of Paragraph 2 and therefore denies those allegations on that basis.

3. In answer to Paragraph 3 of the Complaint, Forever 21 denies that Forever 21, Inc. operates or does business in California through retail stores but admits that Forever 21, Inc. does business in California through its website.

4. Forever 21 denies that Forever 21, Retail, Inc. does business through a website but otherwise admits the allegations of Paragraph 4.

5. Admitted.

6. In answer to Paragraph 6 of the Complaint, Forever 21 denies each and every allegation of said Paragraph.

7. Admitted.

JURISDICTION AND VENUE

8. In answer to Paragraph 8 of the Complaint, Forever 21 denies each and every allegation of said Paragraph.

9. In answer to Paragraph 9 of the Complaint, Forever 21 denies each and every allegation of said Paragraph.

10. In answer to Paragraph 10 of the Complaint, Forever 21 denies each and every allegation of said Paragraph.

INTERDISTRICT ASSIGNMENT

11. In answer to Paragraph 11 of the Complaint, Forever 21 denies each and every allegation of said Paragraph.

FACTUAL BACKGROUND

12. Forever 21 is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations of Paragraph 12 and therefore denies those allegations on that basis.

13. Forever 21 is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations of Paragraph 13 and therefore denies those allegations on

1 that basis.

2 14. Forever 21 is without knowledge or information sufficient to form a belief as
3 to the truth or falsity of the allegations of Paragraph 14 and therefore denies those allegations on
4 that basis.

5 15. Forever 21 is without knowledge or information sufficient to form a belief as
6 to the truth or falsity of the allegations of Paragraph 15 and therefore denies those allegations on
7 that basis.

8 16. Forever 21 is without knowledge or information sufficient to form a belief as
9 to the truth or falsity of the allegations of Paragraph 16 and therefore denies those allegations on
10 that basis.

11 17. Forever 21 is without knowledge or information sufficient to form a belief as
12 to the truth or falsity of the allegations of Paragraph 17 and therefore denies those allegations on
13 that basis.

14 18. Forever 21 is without knowledge or information sufficient to form a belief as
15 to the truth or falsity of the allegations of Paragraph 18 and therefore denies those allegations on
16 that basis.

17 19. Forever 21 is without knowledge or information sufficient to form a belief as
18 to the truth or falsity of the allegations of Paragraph 19 and therefore denies those allegations on
19 that basis.

20 20. Forever 21 is without knowledge or information sufficient to form a belief as
21 to the truth or falsity of the allegations of Paragraph 20 and therefore denies those allegations on
22 that basis.

23 21. Forever 21 is without knowledge or information sufficient to form a belief as
24 to the truth or falsity of the allegations of Paragraph 21 and therefore denies those allegations on
25 that basis.

26 22. Forever 21 admits that Fashion 21, Inc. was formed before Forever 21, Inc.
27 but otherwise denies each and every allegation of said Paragraph.

28 23. Forever 21 admits that it attempts to sell its products to everyone, including

1 young women but otherwise denies each and every allegation of said Paragraph.

2 24. Forever 21 is without knowledge or information sufficient to form a belief as
3 to the truth or falsity of the allegations of Paragraph 24 and therefore denies those allegations on
4 that basis.

5 25. In answer to Paragraph 25 of the Complaint, Forever 21 denies each and
6 every allegation of said Paragraph.

7 26. In answer to Paragraph 26 of the Complaint, Forever 21 denies each and
8 every allegation of said Paragraph.

9 26a. In answer to Paragraph 26a of the Complaint, Forever 21 denies each
10 and every allegation of said Paragraph.

11 26b. In answer to Paragraph 26b of the Complaint, Forever 21 denies each
12 and every allegation of said Paragraph.

13 26c. In answer to Paragraph 26c of the Complaint, Forever 21 denies each
14 and every allegation of said Paragraph.

15 26d. In answer to Paragraph 26d of the Complaint, Forever 21 denies each
16 and every allegation of said Paragraph.

17 26e. In answer to Paragraph 26e of the Complaint, Forever 21 denies each
18 and every allegation of said Paragraph.

19 26f. In answer to Paragraph 26f of the Complaint, Forever 21 denies each
20 and every allegation of said Paragraph.

21 26g. In answer to Paragraph 26g of the Complaint, Forever 21 denies each
22 and every allegation of said Paragraph.

23 26h. In answer to Paragraph 26h of the Complaint, Forever 21 denies each
24 and every allegation of said Paragraph.

25 27. In answer to Paragraph 27 of the Complaint, Forever 21 denies each and
26 every allegation of said Paragraph.

27 28. In answer to Paragraph 28 of the Complaint, Forever 21 denies each and
28 every allegation of said Paragraph.

1 29. In answer to Paragraph 29 of the Complaint, Forever 21 denies each and
2 every allegation of said Paragraph.

3 29a. In answer to Paragraph 29a of the Complaint, Forever 21 denies each
4 and every allegation of said Paragraph.

5 29b. In answer to Paragraph 29b of the Complaint, Forever 21 denies each
6 and every allegation of said Paragraph.

7 29c. In answer to Paragraph 29c of the Complaint, Forever 21 denies each
8 and every allegation of said Paragraph.

9 29d. In answer to Paragraph 29d of the Complaint, Forever 21 denies each
10 and every allegation of said Paragraph.

11 29e. In answer to Paragraph 29e of the Complaint, Forever 21 denies each
12 and every allegation of said Paragraph.

13 29f. In answer to Paragraph 29f of the Complaint, Forever 21 denies each
14 and every allegation of said Paragraph.

15 29g. In answer to Paragraph 29g of the Complaint, Forever 21 denies each
16 and every allegation of said Paragraph.

17 29h. In answer to Paragraph 29h of the Complaint, Forever 21 denies each
18 and every allegation of said Paragraph.

19 29i. In answer to Paragraph 29i of the Complaint, Forever 21 denies each
20 and every allegation of said Paragraph.

21 29j. In answer to Paragraph 29j of the Complaint, Forever 21 denies each
22 and every allegation of said Paragraph.

23 29k. In answer to Paragraph 29k of the Complaint, Forever 21 denies each
24 and every allegation of said Paragraph.

25 29l. In answer to Paragraph 29l of the Complaint, Forever 21 denies each
26 and every allegation of said Paragraph.

27 29m. In answer to Paragraph 29m of the Complaint, Forever 21 denies each
28 and every allegation of said Paragraph.

1 29n. In answer to Paragraph 29n of the Complaint, Forever 21 denies each
2 and every allegation of said Paragraph.

3 29o. In answer to Paragraph 29o of the Complaint, Forever 21 denies each
4 and every allegation of said Paragraph.

5 29p. In answer to Paragraph 29p of the Complaint, Forever 21 denies each
6 and every allegation of said Paragraph.

7 29q. In answer to Paragraph 29q of the Complaint, Forever 21 denies each
8 and every allegation of said Paragraph.

9 29r. In answer to Paragraph 29r of the Complaint, Forever 21 denies each
10 and every allegation of said Paragraph.

11 29s. In answer to Paragraph 29s of the Complaint, Forever 21 denies each
12 and every allegation of said Paragraph.

13 29t. In answer to Paragraph 29t of the Complaint, Forever 21 denies each
14 and every allegation of said Paragraph.

15 30. In answer to Paragraph 30 of the Complaint, Forever 21 denies each and
16 every allegation of said Paragraph.

17 **FIRST CLAIM FOR RELIEF**

18 (Copyright Infringement Against Forever 21)

19 31. This Paragraph does not require a response.

20 32. In answer to Paragraph 32 of the Complaint, Forever 21 denies each and
21 every allegation of said Paragraph.

22 33. In answer to Paragraph 33 of the Complaint, Forever 21 denies each and
23 every allegation of said Paragraph.

24 34. In answer to Paragraph 34 of the Complaint, Forever 21 denies each and
25 every allegation of said Paragraph.

26 35. In answer to Paragraph 35 of the Complaint, Forever 21 denies each and
27 every allegation of said Paragraph.

28 36. In answer to Paragraph 36 of the Complaint, Forever 21 denies each and

1 every allegation of said Paragraph.

2 37. In answer to Paragraph 37 of the Complaint, Forever 21 denies each and
3 every allegation of said Paragraph.

4
5 **SECOND CLAIM FOR RELIEF**

6 (Unfair Competition)

7 38. This Paragraph does not require a response.

8 39. In answer to Paragraph 39 of the Complaint, Forever 21 denies each and
9 every allegation of said Paragraph.

10 40. In answer to Paragraph 40 of the Complaint, Forever 21 denies each and
11 every allegation of said Paragraph.

12 41. In answer to Paragraph 41 of the Complaint, Forever 21 denies each and
13 every allegation of said Paragraph.

14 41a. In answer to Paragraph 41a of the Complaint, Forever 21 denies each
15 and every allegation of said Paragraph.

16 41b. In answer to Paragraph 41b of the Complaint, Forever 21 denies each
17 and every allegation of said Paragraph.

18 42. In answer to Paragraph 42 of the Complaint, Forever 21 denies each and
19 every allegation of said Paragraph.

20 43. In answer to Paragraph 43 of the Complaint, Forever 21 denies each and
21 every allegation of said Paragraph.

22 44. In answer to Paragraph 44 of the Complaint, Forever 21 denies each and
23 every allegation of said Paragraph.

24 45. In answer to Paragraph 45 of the Complaint, Forever 21 denies each and
25 every allegation of said Paragraph.

26 46. In answer to Paragraph 46 of the Complaint, Forever 21 denies each and
27 every allegation of said Paragraph.

28 **THIRD CLAIM FOR RELIEF**

(Tortious Interference With Prospective Business Advantage)

47. This Paragraph does not require a response.

48. In answer to Paragraph 48 of the Complaint, Forever 21 denies each and every allegation of said Paragraph.

49. In answer to Paragraph 49 of the Complaint, Forever 21 denies each and every allegation of said Paragraph.

50. In answer to Paragraph 50 of the Complaint, Forever 21 denies each and every allegation of said Paragraph.

51. In answer to Paragraph 51 of the Complaint, Forever 21 denies each and every allegation of said Paragraph.

52. In answer to Paragraph 52 of the Complaint, Forever 21 denies each and every allegation of said Paragraph.

53. In answer to Paragraph 53 of the Complaint, Forever 21 denies each and every allegation of said Paragraph.

54. In answer to Paragraph 54 of the Complaint, Forever 21 denies each and every allegation of said Paragraph.

55. In answer to Paragraph 55 of the Complaint, Forever 21 denies each and every allegation of said Paragraph.

56. In answer to Paragraph 56 of the Complaint, Forever 21 denies each and every allegation of said Paragraph.

57. In answer to Paragraph 57 of the Complaint, Forever 21 denies each and every allegation of said Paragraph.

58. In answer to Paragraph 58 of the Complaint, Forever 21 denies each and every allegation of said Paragraph.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

59. The Complaint, in whole or in part, fails to state a claim upon which relief may be granted.

SECOND AFFIRMATIVE DEFENSE

60. bebe's claims, and each of them, are barred, in whole or in part, by the defense of waiver.

THIRD AFFIRMATIVE DEFENSE

61. bebe's claims, and each of them, are barred, in whole or in part, by the defense of laches.

FOURTH AFFIRMATIVE DEFENSE

62. bebe's claims, and each of them, are barred, in whole or in part, by the defense of estoppel.

FIFTH AFFIRMATIVE DEFENSE

63. bebe's claims, and each of them, are barred, in whole or in part, because the Court lacks subject matter jurisdiction, including because bebe's claims are not ripe, are moot, or because bebe has not complied with the registration requirements for the alleged copyrights that it claims were infringed.

SIXTH AFFIRMATIVE DEFENSE

64. bebe expressly or impliedly consented to the conduct alleged in the Complaint, and Forever 21 therefore has no liability to bebe.

SEVENTH AFFIRMATIVE DEFENSE

65. bebe's claims based upon alleged copyright infringement are barred, in whole or in part, because any use of bebe's alleged copyrights by Forever 21 constitutes fair use.

EIGHTH AFFIRMATIVE DEFENSE

66. bebe's claims of alleged copyright infringement are barred because of bebe's fraud in its application for a U.S. copyright registration.

NINTH AFFIRMATIVE DEFENSE

67. bebe's claims based upon alleged copyright infringement are barred, in whole or in part, because the alleged copyrighted works are derivative works based upon works in which Forever 21 owns the copyright.

TENTH AFFIRMATIVE DEFENSE

68. bebe's claims based upon alleged copyright infringement are barred, in whole or in part, because any used of bebe's alleged copyrights by Forever 21 was *de minimis*.

ELEVENTH AFFIRMATIVE DEFENSE

69. Forever 21 denies that bebe has suffered any damages, but to the extent it has, bebe's claims for damages are barred, in whole or in part, because bebe failed to take reasonable steps to mitigate its damages.

TWELFTH AFFIRMATIVE DEFENSE

70. bebe's claims, and each of them, against Forever 21 are barred, in whole or in part, by the doctrine of unclean hands.

THIRTEENTH AFFIRMATIVE DEFENSE

71. bebe's claims under are barred by federal preemption.

FOURTEENTH AFFIRMATIVE DEFENSE

72. Forever 21 denies that it infringed any alleged copyrights of bebe, but to the extent they did, Forever 21 acted with innocent intent, including that under 17 U.S.C. § 504 (c)(2) any award of statutory damages should be reduced accordingly.

FIFTEENTH AFFIRMATIVE DEFENSE

73. Forever 21 has insufficient knowledge or information upon which to form a belief as to whether it may have additional, as yet unstated, separate defenses available and hence reserves the right to amend this Answer to add, delete, or modify defenses based upon legal theories that may or will be divulged through discovery or the factual bases for bebe's claims or further legal analysis.

74. bebe's copyright claims are barred in whole or in part by the doctrine of functionality.

WHEREFORE, Forever 21 prays for judgment as follows:

1. That the Complaint and each claim for relief therein be dismissed with prejudice;
2. That bebe take nothing by its Complaint;

3. that Forever 21 be awarded its costs incurred herein, including attorney fees;
and

4. That the Court order such other and further relief for Forever 21 as the Court
may deem just and proper.

DATED: February 22, 2007

JEFFER, MANGELS, BUTLER & MARMARO LLP
PAUL L. WARNER

By: /s/ Paul L. Warner

PAUL L. WARNER

Attorneys for Defendants Forever 21, Inc., Forever 21
Retail, Inc., Forever 21 Logistics, LLC, and Forever
XXI, Inc.

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